
**In re adoption of voluntary court forms
designed for self-represented litigants**

PETITION

The Director of State Courts, on the recommendation of the Records Management Committee (RMC), hereby petitions this court to amend the statutes and rules governing standard court forms in a way that will allow RMC to oversee court forms designed for self-represented litigants without making use of the forms mandatory. This change is requested pursuant to the court's rulemaking authority under §751.12.

Currently, all forms generated by RMC on behalf of the judicial conference are standard forms that must be used by parties and court officials in civil and criminal actions if the forms are applicable. *See* Supreme Court Order 98-01, 228 Wis.2d xiii (2000), creating Wis. Stat. §758.18 (judicial conference shall adopt standard forms for use by parties and court officials in all civil and criminal actions); §807.001 (standard forms to be used in civil actions); §971.025 (standard forms to be used in criminal and juvenile actions); and SCR 70.153 (RMC shall publicize forms and respond to objections, with final determination

by this court).¹ The clear import of these statutes is that any form approved by RMC is necessarily a mandatory form.

At the same time that mandatory forms have become standard practice for the bench and bar, the courts have seen a growing number of self-represented litigants, particularly in family cases. In 2000, a survey conducted by the Wisconsin Pro Se Working Group found increasing numbers of self-represented litigants in all counties, as well as general agreement among the clerks of circuit court that it would be helpful to provide forms and instructions to self-represented litigants.² The report recommended that the court develop user-friendly family forms for statewide use. At the time, RMC was not prepared to take on the extra workload, so the report stopped short of recommending that the task be assigned to RMC. The report also noted that the statutes and rules making RMC forms mandatory would be an obstacle, since the report did not envision that pro se forms would be mandatory.

In 2004, the Chief Justice appointed the former state law librarian, in consultation with an *ad hoc* working group, to develop a set of simplified family

¹ See also *Bylaws of the Judicial Conference of Wisconsin*, Art. VIII (if statute or rule requires form development, judicial members of RMC authorized to act on behalf of judicial conference).

²See *Pro Se Litigation: Meeting the Challenge of Self-Represented Litigants in Wisconsin* at 7 (December 2000).

forms suitable for use by self-represented litigants statewide.³ This group has now completed a set of family forms that is ready to be reviewed and distributed. The pro se forms are not intended to be mandatory, since their purpose is to make it easier for self-represented litigants to use the courts, not to pose a hurdle for them. Because they are simplified forms, their use should not be mandatory for attorneys, although attorneys may use them where appropriate.

The purpose of this amendment is to assure that RMC has the necessary authority to handle voluntary pro se forms. It requires that the forms be accepted for filing as long as they are properly completed, so they can be filed in any circuit court without fear of rejection. If the clerk of circuit court distributes pro se forms or posts them on a county website, the clerk must use the RMC form if one is available.

While these forms have the potential to be a great resource for litigants and courts, their effectiveness will be short-lived unless they have institutional support to ensure that they stay up to date. RMC believes that user-friendly forms for self-represented litigants should be available on a uniform basis statewide. Since RMC is a continuing committee with special expertise in the area of forms

³ The demand for these forms is so great that local working groups have already developed family forms for use in Waukesha County and in the Tenth Judicial District, now incorporated into the statewide committee's work. A 2003 study in the Tenth Judicial District found that one or both parties are self-represented in 64% of family cases, 75% of small claims cases, and 58% of civil cases.

development and maintenance, it is appropriate that RMC act as the clearinghouse for pro se forms to assure they are legally sufficient.

Under the proposed change, RMC will review any pro se forms before they are finalized and will take on the responsibility of keeping them updated and posted on the court website.⁴ Although RMC currently does not plan to create any pro se forms, the rule should be written to give RMC that option if the committee finds it to be appropriate in the future. The director of state courts will act as gatekeeper for all form requests, to protect RMC from being inundated with form proposals from inside and outside the court system. Only family forms are under consideration at this time.

Accordingly, RMC requests that the statutes be amended as follows:

§ 758.18 Judicial conference: standard court forms.

(1) The judicial conference shall adopt standard court forms for use by parties and court officials in all civil and criminal actions and proceedings in the circuit court as provided in §807.001(1) – (4) and §971.025(1) – (4).

(2) In addition, at the request of the director of state courts, the judicial conference may adopt forms created for voluntary use by self-represented litigants in the circuit court. The judicial conference shall identify which forms are intended for voluntary use.

⁴ CCAP staff have been working with the *ad hoc* committee to make fillable forms and simplified instructions available on the court website.

§807.001 Forms.

(1) In all civil actions and proceedings in circuit court, the parties and court officials shall use the standard court forms adopted by the judicial conference under s. 758.18, commencing the date on which the forms are adopted.

(2) A party or court official may supplement a standard court form with additional material.

(3) A court may not dismiss a case, refuse a filing or strike a pleading for failure of a party to use a standard court form or to follow the format rules but shall require the party to submit, within 10 days, a corrected form and may impose statutory fees or costs or both.

(4) If the judicial conference does not create a standard court form for an action or pleading undertaken by a party or court official, the party or court official may use a format consistent with any statutory or court requirement for the action or pleading.

(5) In addition, the judicial conference may adopt forms created for voluntary use by self-represented litigants in the circuit court as provided in §758.18(2).

§971.025 Forms.

(1) In all criminal actions and proceedings and actions and proceedings under chapters 48 and 938 in circuit court, the parties and court officials shall

use the standard court forms adopted by the judicial conference under s. 758.18, commencing the date on which the forms are adopted.

(2) A party or court official may supplement a standard court form with additional material.

(3) A court may not dismiss a case, refuse a filing or strike a pleading for failure of a party to use a standard court form or to follow the format rules but shall require the party to submit, within 10 days, a corrected form and may impose statutory fees or costs or both.

(4) If the judicial conference does not create a standard court form for an action or pleading undertaken by a party or court official, the party or court official may use a format consistent with any statutory or court requirement for the action or pleading.

(5) In addition, the judicial conference may adopt forms created for voluntary use by self-represented litigants in the circuit court as provided in §758.18(2).

SCR 70.153 Judicial conference, forms.

(1) The standard court forms that the judicial conference is required to adopt under §758.18 of the statutes shall be developed by the records management committee, an advisory committee to the director of state courts office.

(2) Under article VIII of the bylaws of the judicial conference, the judicial members of the records management committee act on behalf of the judicial conference in the adoption of standard court forms.

(3) Each standard court form shall include a notice that the form may be supplemented with additional material.

(4) (a) Upon adoption of a standard court form, the records management committee shall distribute or make a copy of the form available to the clerks of circuit court, the circuit court judges, the state bar of Wisconsin and other persons who are required to use the form.

(b) Within 90 days after the date of distribution of a standard court form under par. (a), an interested person may file with the records management committee a written objection to the mandatory use of the form, to the content of the form or to both the use and the content.

(c) The records management committee shall respond to the objector under par. (b) in writing within 90 days after receipt of the objection.

(d) Within 30 days after the date on which he or she receives the written response of the records management committee to an objection filed under par. (b), the person filing the objection may file with the clerk of the supreme court a petition for review of the decision of the records management committee. The supreme court may request a response from the records

management committee and establish a schedule for submission of the matter to the supreme court for determination.

(5) (a) In addition, the judicial members of the records management committee may act on behalf of the judicial conference in the adoption of voluntary forms created for use by self-represented litigants in the circuit court as provided in §758.18(2).

(b) Upon adoption of a voluntary form, the records management committee shall distribute or make a copy of the form available to the clerks of circuit court, the circuit court judges, and the state bar of Wisconsin.

(c) Any adopted voluntary form, if properly completed, shall be received for filing or other appropriate action by the circuit court. If a clerk of circuit court distributes voluntary forms, the clerk must use adopted forms whenever they are available for that purpose.

(d) Voluntary forms may be used by members of the state bar if no mandatory form is available for that purpose.

(e) A party or court official may supplement an adopted voluntary form with additional material.

Respectfully submitted this ____ day of _____, 2005.

A. John Voelker
Director of State Courts